

Sir NICHOLAS SHIREBORNE, *Baronet*,

PLAINTIFF.

ROBERT HITCH, *Esquire*,

DEFENDANT.

In Quare Impedit to the Presentation
to the Church of Guisley in York-
shire.

The Plaintiff's CASE.

TH E Defendant has petition'd the House to alter the Judgment of the Queen's-Bench, and also the Judgment of the House given last Session of Parliament.

The Plaintiff, upon the insufficiency of the Defendant's Plea, had Judgment against him in the Common-Pleas, and had a Writ to the Bishop. Whereupon Mr. *Hackett*, the Plaintiff's Clerk, above four years since, was instituted and inducted, and remained in possession.

Afterwards the Defendant brought a Writ of Error in the Queen's-Bench, where his Plea was again held naught, but there being a Fault found in the Plaintiff's Declaration, the Judgment of the Common-Pleas was reversed: And the Queen's-Bench gave a Judgment, *Quod Defendans ad omnia quæ ipse occasione judicii prædicti amisit restituetur*, which is the very Judgment the Defendant himself prays in his Writ of Error. He never asking a Writ to the Bishop, nor the Court granting him a Writ by their Judgment.

Upon which, the last Session of Parliament, the Plaintiff brings a Writ of Error in the House of Lords (when the Defendant did not pretend to make good his Plea) And the House appointed all the Judges to attend, and give their Opinion of the Exception that had been taken to the Plaintiff's Declaration, when Four or Five of the Judges were of Opinion, that the Declaration was good, but the majority of them held the contrary. Whereupon the House affirmed the Judgment of the Queen's-Bench: But at the same time thought it a Hardship upon the Plaintiff, and ordered a Bill to be brought in, to remedy the like for the future, which pass'd into an Act, entituled, *An Act to preserve the Right of Patrons to Advowsons*.

Easter-Term, 1708.
The Defendant is denied a Writ to the Bishop.
Then, (the Term after the Judgment in the Queen's-Bench was affirmed in the House of Lords) the Defendant moved the Queen's-Bench to grant him a Writ to the Bishop, which the Court denied him, it being neither asked in his Writ of Error, nor mentioned in the Judgment, both which ought to be according to the Precedents in all Cases, where the Defendant is entituled to such a Writ.

The same Term the Plaintiff applied himself to the Officers of the House of Lords, to have the *Remittitur* or Judgment brought down and entered into the *Queen's-Bench*, that he might see what it was, and advise what to do thereupon; when the Officers acquainted him, that one Mr. *Close* the Defendant's Attorney had it, but would not deliver it back again to them, nor enter it according to the Order of the House; then the Plaintiff moved the Court of *Queen's-Bench* against the Attorney, to make a Rule for him to enter it: Whereupon the Court made several Rules for him to enter it, which the Attorney did not obey. But after, the Defendant's Council acquainted the Court, that they designed to have Recourse back to the House of Lords to alter the Judgment: The Court would not interpose in it; and told them, it was their Opinion the House would do nothing more in it.

Therefore it's humbly hoped your Lordships will not receive the Petition.

Reason I. Because the Plaintiff is advised the Defendant is not entituled to such a Writ; it being in a *Quare Impedit*, where both are in Law Plaintiffs, neither Party, at that time, having Institution and Induction, and the Defendant's Plea is as bad as the Plaintiff's Declaration.

II. Because the Judgment already is the very same the Defendant asks.

III. It is now another *Session*, and the Defendant had time enough to petition the last *Session*, which he did not do.

IV. The Plaintiff's Judgment was reversed, merely for a Mistake in his Declaration, which the House thought so hard, that they pass'd the *Act* before-mention'd. Therefore he humbly hopes the Defendant shall suffer for his Mistake as well as the Plaintiff; especially since his first Plea being naught, was the Reason the Merits of this Cause could never come in-Question.

V. The Plaintiff's Clerk has been near Four Years in Possession and is no Party in the Suit; neither did he come in *Pendente Lite*; So that to remove him in such a Case, would be to turn him out of his Freehold, without being heard, there being no *Scire facias*, or any thing brought against him.

VI. 'Tis a Presumption in the Defendant now to move the House for a Writ to the Bishop, to institute and induct his Clerk, since by Surprise he has already prevailed with my Lord Arch-Bishop of *York*, to institute him without a Writ; and has broke open the Church Doors in order for Induction, and by Force entred the Parsonage House, and turned the Plaintiff's Clerk, and his Goods, out into the Street, to his great Damage; and still forcibly detains the Possession thereof.

J. Jekyll.
Edm. Miller.